

International Law Studies – Volume 2
International Law Situations with Solutions and Notes
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SITUATION VII.

Several powers, not including the United States, have united in proclaiming a pacific blockade of minor state K. A merchant vessel of the United States bound for a port of K approaches this port and is warned by a vessel representative of the blockading powers not to enter under penalty of violation of blockade. The captain of the merchant vessel appeals to the commander of a United States vessel of war to convoy him through, or in some other manner secure for his vessel entrance to the port.

What action should the commander take, and why?

SOLUTION.

The commander of the United States vessel of war should request of the commander of the forces maintaining the pacific blockade that the merchant vessel of the United States enter port K. If this is not permitted, he should inform the commander of the forces maintaining the pacific blockade that the United States does not acknowledge the right in time of peace to thus interrupt commerce of powers not concerned in the blockade, and he should give formal notice that the United States would hold the blockading states responsible.

NOTES ON SITUATION VII.

THE EFFECT OF PACIFIC BLOCKADE.

General opinions in regard to pacific blockade.—Theoretically, blockade of any kind is strictly a measure of war, but in spite of this theoretical position the practice of the last three-quarters of a century has seen the institution of no less than sixteen so-called blockades while there was formally a state of peace. These have been termed pacific blockades, and however objectionable such a term may be theoretically, the fact must be considered.

These pacific blockades have not shown a uniform practice in the relations between the parties to the blockade and those not concerned who, for convenience, may be called neutrals, though not properly so, as "neutrals" imply "belligerents," and therefore war.

Before 1850 the blockades called pacific generally treated all flags alike. The French at Formosa in 1884 endeavored to extend the field of operations so as to cover neutrals; so again, when France blockaded Menam in 1883, and in the case of the blockade of Crete by the powers in 1897, the inclination was to extend the application beyond the powers concerned.

The blockade of Greece in 1886 was distinctly aimed against the Greek flag.

The review of recent blockades undertaken directly for the advantage of the state initiating them, and not on the grounds of public policy, shows that these blockades undertaken on the narrower grounds have not been sanctioned in acting against third parties.

"It is now generally admitted, however, that neutral commerce is not to be disturbed during pacific blockades."¹

"Neutrals would not to-day submit to the restrictions placed upon their trade by measures of blockade unless instituted in the prosecution of open declared war."²

Lord Granville wrote to Mr. Waddington, November 11, 1884, at the time of the so-called pacific blockade of Formosa:

"The contention of the French Government that a 'pacific blockade' confers on the blockading power the right to capture and condemn the ships of third nations for a breach of such a blockade is in conflict with well-established principles of international law."³

Thus the plan of France to use measures justifiable only in war was denied. If those blockading desire themselves to have the advantage of such rights as are conferred upon belligerents, they must become belligerents by instituting a state of war.

¹ H. Taylor, *Int. Pub. Law*, 1901, p. 445.

² Glass, *Marine Int. Law*, Part IV, sec. 19.

³ *Par. Papers, France*, No. 1, 1885.

Walker¹ says:

“It may be questioned whether, in its wider extension, pacific blockade must not justify itself rather as a mode of warfare limited in operation than as a means of redress falling short of war; for the operation of such a measure may extend either to subjects of the blockading and blockaded powers only, or to the vessels of all nations. If it be confined to subjects of the parties directly engaged, its legitimacy can hardly be matter for serious consideration. The less is justified in the greater, and the blockaded sovereign has it in his power either to free himself from the inconvenience by the grant of redress, or to resent it by the declaration of war.

“If, however, the trade of neutrals be affected by the blockade, those neutrals may well protest against interference with their traffic not fully and completely justifiable. For them such protest must be matter of policy. Pacific blockade may be, and doubtless is, the less of two evils; to refuse to recognize it may be to force the offended state to legalize its acts by instituting a regular blockade as a measure of war.”

Bonfils summarizes the situation of the majority (Fauchille's edition of his “*Droit International Public*”) when he says:

“Sec. 992. We think, with M. F. de Martens (t. III, p. 173), that the so-called pacific blockade can not be justified, either in the name of humanity or from the point of view of good sense. The catastrophe of Navarino shows that it may have a bloody ending. In time of peace, reprisals ought to injure only the state which provokes them. The pacific blockade can produce serious results only when neutral states are obliged to respect it. But there can be no question of neutrality, properly so called, in time of peace. No obligation, in the proper and juridical sense, can oblige third states to submit to the conditions of a pacific blockade. But under these limitations the blockade has neither meaning nor value. If it is maintained with regard to third states, it injures their rights and legitimate interests. * * *

¹ Science of Int. Law, p. 157.

“Sec. 993. For powers of the first rank, the pacific blockade constitutes a means, little burdensome, therefore more alluring, of making states of the second rank to submit to all kinds of vexations and annoyances. At bottom it is simply an act of war, a fact of hostility. In resorting to pacific blockade, the powers do not endeavor to escape war itself, but only the inconveniences and main obligations which war brings. It is considerations of interest, and not considerations of humanity, which urge maritime powers to resort to this means of constraint, which causes great losses to commerce in general.”

Résumé.—It would seem from the weight of authorities and from the majority of later cases, that pacific blockades should not bear upon third states except as they are affected by the constraint directly applied to the state blockaded, i. e., the vessels of a third state should be entirely free to go and come while such measures of constraint as may be decided upon may be applied to the blockaded state.

If the need for interruption of relations between the blockaded state and third states is sufficiently serious to require the seizure of neutral vessels, it would seem to warrant the institution of a regular blockade involving a state of war.

If only the mild constraint which is short of war, the blockade affecting merely the blockaded state's commerce, is necessary, then pacific blockade, though it works inconvenience, may be legitimate.

Snow's International Law,¹ Manual Naval War College, says, after citing instances:

“It can thus be seen that without admitting the pacific blockade to be an established legal means of restraint or reprisal short of war, still the general tendency of writers, and more particularly of the great maritime states, is to favor its exercise, and while it may be desirable that other powers than those concerned should not be involved, still a blockade not applying to all maritime powers would not, as a rule, be effective or secure the results for which it was instituted.”

¹ P. 74.

The blockade of Crete, 1897.—The official relations of the United States to the blockade of Crete in 1897 can be seen from the following communications.¹

[Mr. Carter to Mr. Sherman. Telegram.]

EMBASSY OF THE UNITED STATES,
London, March 21 (?), 1897.

Officially notified blockade of Crete by powers March 21.
CARTER.

[Mr. Carter to Mr. Sherman.]

No. 887. EMBASSY OF THE UNITED STATES,
London, March 21, 1897.

SIR: I have the honor to inclose herewith a copy of my telegram, sent from this embassy to-day, together with a copy of a note received from the foreign office under date of March 20, 1897, announcing the intended establishment on the 21st of March of a blockade of the island of Crete by the combined British, Austro-Hungarian, French, German, Italian, and Russian naval forces, and transmitting three copies of notifications inserted in a supplement to the London Gazette of the 19th instant, two of which I have also the honor to inclose herewith, in order that they may become known to the citizens of the United States.

I have duly acknowledged the reception of the note above mentioned, and have informed Lord Salisbury that a copy thereof had been forwarded to my Government.

I have the honor, etc.,

JOHN RUDGELY CARTER.

(Inclosure in No. 887.)

[Mr. Villiers to Mr. Carter.]

FOREIGN OFFICE, *March 20, 1897.*

SIR: I have the honor to transmit to you three copies of notifications inserted in a supplement to the London Gazette, of the 19th instant, announcing the intended establishment on the 21st March of a blockade of the island of Crete by the combined British, Austro-Hungarian, French, German, Italian, and Russian forces.

¹ For. Rel. U. S., 1897, pp. 253-255.

I request that you will have the goodness to transmit copies of these notifications to your Government, in order that they may, through that channel, become known to the citizens of the United States.

I have the honor, etc.,

F. H. VILLIERS.

(*In the absence of the Marquis of Salisbury.*)

(Subinclosure in No. 887.—From the Supplement to the London Gazette of Friday, March 19, 1897.)

FOREIGN OFFICE, *March 19, 1897.*

It is hereby notified that the Marquis of Salisbury, K. G., Her Majesty's principal secretary of state for foreign affairs, has received a telegraphic dispatch from Rear Admiral Harris, commanding Her Majesty's naval forces in Cretan waters, addressed to lords commissioners of the admiralty, and dated the 18th of March, announcing that the admirals in command of the British, Austro-Hungarian, French, German, Italian, and Russian naval forces have decided to put the island of Crete in a state of blockade, commencing the 21st of March, 8 a. m.

The blockade will be general for all ships under the Greek flag.

Ships of the six powers, or neutral powers, may enter into the ports occupied by the powers and land their merchandise, but only if it is not for the Greek troops or the interior of the island. These ships may be visited by the ships of the international fleets.

The limits of the blockade are comprised between $23^{\circ} 24'$ and $26^{\circ} 30'$ east of Greenwich, and $35^{\circ} 48'$ and $34^{\circ} 45'$ north latitude.

[Sir Julian Pauncefote to Mr. Sherman.]

BRITISH EMBASSY,

Washington, March 24, 1897.

SIR: On behalf of my government and at the request of my colleagues, the representatives of Austria-Hungary, France, Germany, Italy, and Russia, I have the honor to transmit the inclosed communication relative to certain measures taken by the naval forces of the great powers, signatories of the treaty of Berlin, in the waters of the island of Crete.

I desire to explain that this communication has not been delivered on the date which it bears, owing to an accidental delay in the receipt of their instructions by some of my colleagues.

I avail myself, etc.,

JULIAN PAUNCEFOTE.

[Inclosure.]

WASHINGTON, *March 20, 1897.*

The undersigned, under instructions from their respective governments, have the honor to notify the Government of the United States that the admirals in command of the forces of Austria-Hungary, France, Germany, Great Britain, Italy, and Russia, in Cretan waters, have decided to put the island of Crete in a state of blockade, commencing the 21st instant at 8 a. m.

The blockade will be general for all ships under the Greek flag. Ships of the six powers or neutral powers may enter into the ports occupied by the powers and land their merchandise, but only if it is not for the Greek troops or the interior of the island. The ships may be visited by the ships of the international fleets.

The limits of the blockade are comprised between $23^{\circ} 24'$ and $26^{\circ} 30'$ longitude east of Greenwich, and $35^{\circ} 48'$ and $34^{\circ} 45'$ north latitude.

JULIAN PAUNCEFOTE,

H. B. M. Ambassador.

PATENOTRE,

Ambassadeur de la Republique Francaise.

FAVA,

Ambassiatore d' Italia.

THIELMANN, ETC.

VON HENGELMULLER, ETC.

KOTZSBUE, ETC.

[Mr. Sherman to Sir Julian Pauncefote.]

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DEPARTMENT OF STATE,

Washington, March 26, 1897.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 24th instant, transmitting to

me a communication under date of March 20, 1897, signed by yourself and the representatives of France, Italy, Germany, Austria-Hungary, and Russia at this capital, relative to certain measures taken by the naval forces of the great powers, signatories of the treaty of Berlin, in the waters of the island of Crete.

As the United States is not a signatory of the treaty of Berlin, nor otherwise amenable to the engagements thereof, I confine myself to taking note of the communication, not conceding the right to make such a blockade as referred to in your communication, and reserving the consideration of all international rights and of any question which may in any way affect the commerce or interests of the United States.

I have, etc.,

JOHN SHERMAN.

RAISING OF BLOCKADE OF CRETE.¹

[Sir Julian Pauncefote to Mr. Hay.]

BRITISH EMBASSY,

Washington, December 13, 1898.

SIR: On behalf and at the request of my colleagues, the representatives of France, Italy, and Russia, as well as on behalf of my government, I have the honor to transmit to you for the information of your government the inclosed communication relative to the raising of the blockade in Cretan waters, the institution of which I had the honor to notify to Mr. Sherman on March 24, last year.

I have, etc.,

JULIAN PAUNCEFOTE.

[Inclosure in British note of December 13, 1898.]

WASHINGTON, *December 13, 1898.*

We, the undersigned, representatives of France, Great Britain, Italy, and Russia, have the honor to inform the Government of the United States that the admirals of the four powers in Cretan waters have issued a notice that the blockade of Crete has been raised from the 5th

¹ For. Rel. U. S., 1898, p. 384.

of December instant, but that the importation of arms and munitions of war is absolutely prohibited.

JULIAN PAUNCEFOTE,
H. B. M. Ambassador.

COUNT CASSINI,
Ambassador of Russia.

THIEBAUT,
Charge d'Affaires de France.

G. C. VINCI,
Charge d'Affaires d'Italie.

The blockade of Crete was, in a way, a police measure in accord with the provisions of the treaty of Berlin. It could properly effect the parties to it, but it has been held that it should not reach to neutrals.

In offering an opinion upon certain questions concerning pacific blockade, having in mind the action in Crete in 1897, Sir Walter Phillimore¹ said: "I am also of the opinion that, from the point of view of international law, it would be a misconception of the rules to seize a private vessel bearing the flag of a nation having no active or passive part in the so-called pacific blockade—bearing, for instance, the American or Dutch flag.

The right of blockade, of which the character is very burdensome for neutrals, is exclusively a right of war."

Mr. Lawrence, reviewing this blockade of Crete in 1897, says: "In 1896 the Christians of Crete rose in insurrection against Turkish misrule, and in February, 1897, proclaimed the union of the island with the Greek Kingdom. The great powers of Europe were determined not to allow the reopening of the dangerous Eastern question. They, therefore, forbade the incorporation of Crete with Greece; while, at the same time, they endeavored to bring about such changes in the government as would put an end to the worst evils and satisfy to some extent the aspirations of the Cretan Christians. But the Greeks and the islanders were determined upon union. A force of Greek regular soldiers under Colonel Vasso, was landed in Crete, and Greek volunteers, in considerable numbers, went to the aid of the insurgents. The powers

¹ Jour. du Droit Int. Priv., 24, p. 518.

in return sent a mixed force to occupy the Cretan ports, and instituted by means of an international squadron what was termed a pacific blockade of the island. It commenced on March 21, 1897, and was general so far as Greek vessels were concerned. Other ships were allowed to come into the ports occupied by the powers and disembark their merchandise, provided that it was not destined for the Greek troops or the interior, where the insurgents held out among the mountains. Thus the vessels of powers not concerned in the dispute were interfered with in certain circumstances. The area of their trade was arbitrarily circumscribed in time of peace for the attainment of ends with which they had no concern. The object of the powers was doubtless excellent. They were doing the police work of eastern Europe; but they did it in such a clumsy fashion that they violated the law of pacific blockade which had just emerged from chaos (see sec. 159) mainly through their own proceedings in the similar case of Greece, little more than ten years before. Then the blockade had been directed against Greek ships alone. Why was it now extended to non-Greek vessels? Doubtless, the extension helped to prevent supplies from reaching the insurgents; but the prolongation of the insurrection was largely due to the inability of the European concert to agree upon any acceptable settlement, such as was arrived at in the following year, when, after the withdrawal of Germany and Austria from the concert, autonomous constitution was given to the island, and Prince George of Greece was made high commissioner under the suzerainty of the Sultan. The delay of the powers to act quickly and reasonably in the political sphere led them to resort to acts in the military sphere, which were not the less objectionable because none of those who suffered protested against them. Their action has been defended on the grounds that they were in some sort agents of the Sultan (whom all the time they were coercing), and that as the police force of Europe they were at liberty to act as they pleased. The first reason is amusing, the second dangerous. Those who claim to make and execute the law should be specially careful to observe it. The result

of the action of the great powers in Crete is, that the nascent law of pacific blockade has gone back into the region of doubt and uncertainty.”¹

Franco-Chinese operations, 1884.—At the time of the Franco-Chinese difficulty in 1884, Minister Young wrote to Secretary Frelinghuysen under date of September 16, 1884, from Peking:²

“SIR: There has been much discussion in our diplomatic body as to the rights and duties of neutrals during the present complications between China and France. In my dispatch, No. 505, dated September 7, I inclosed a decree from the throne which appeared in the Peking Gazette August 27. ‘In spite of our desire not to disturb the tranquillity, the pacific relations between France and us have been broken by the affair at Annam in regard to the matter of indemnity.’ Under ordinary circumstances such a proclamation would be regarded as indicative of the actual existence of war, and could impose upon us the duties of neutrals.

“It has been impossible to obtain from the prince, with whom I have had several conversations, any declaration to the effect that China regards herself at war with France. I have asked for an official copy of the decree, but the answer is that decrees from the throne are domestic incidents and do not concern legations.

“I learn, furthermore, that M. Jules Ferry has said to European governments that France does not regard herself as at war with China. A proclamation issued by M. Lemaire, consul general of France at Shanghai, confirms this belief. At the same time the French at Kealing forcibly prevent a German ship from landing cargo, and the captain, in doing so, avers that he commits a ‘belligerent act.’

“The question has assumed practical shape in various instances. The consul general and the consul at Tientsin have been asked whether American ships could carry munitions of war for Chinese. I have informed them that until war is declared our vessels are at liberty to carry any lawful merchandise. The consul at Foochow writes that he had forbidden American pilots to

¹ Int. Law, 2d ed., p. 670.

² For. Rel. 1884, p. 103.

serve on French ships. I have said to him that until we know war exists, American pilots are free to accept any engagements."

The various representatives generally took the position that until either China or France made it officially known that there was war, they would assume none of the duties of neutrality, as Mr. Young said, "I see no reason for imposing the obligations of neutrality upon our people until we know war exists." With this position the English, Japanese, and Russian representatives agreed.

Although it was held by some that *de facto* war existed, no state actually proclaimed neutrality. Great Britain put into operation her foreign enlistment act as a domestic measure, and France agreed not to exercise full belligerent acts in way of search and seizure.

The letter of Lord Granville to M. Waddington¹ said that Great Britain would put in operation the foreign enlistment act merely if France limited its operations to certain regions, and if France would refrain from the exercise of belligerent rights as regards neutral vessels in the high seas.

The blockade of Formosa was announced October 20, 1884, to be effective from October 23. The proclamation allowed three days for friendly vessels to depart and announced that it would be effective against all vessels conformably to the international law and treaties in force.

In a letter of November 11, 1884, the English minister said that the pretention of the French Government, that a pacific blockade conferred on the power which established it the right to seize and condemn ships of a third power for violation of a blockade, is in opposition to the opinion of the most eminent statesmen and jurists of France, to the decisions of the courts, and to the well-established principles of international law. Further, he says the condition then prevailing was a state of war between France and China.

¹Blue Book, France, I, 1885, p. 3.

China on August 27, 1884, issued the following to the foreign representatives:

“The French fleet has commenced hostilities at Foo-chow. The duty of neutral powers being to maintain neutrality in accord with the law of nations, we respectfully request you to give stringent orders to your citizens that they refrain from furnishing coal to French vessels.”

They also request that no cipher dispatches be transmitted for France, and of Japan that no sales of horses be made.

The ministers of the United States, England, and Russia saw no reason to act in regard to coal and messages if war did not exist.

France, on the other hand, wished to consider rice contraband and coal free, the last on the ground that war was not declared.¹

Whatever may be maintained in regard to pacific blockade, this was certainly war with an attempt to qualify it in area and range of operations.

The attempt of France was to establish a war blockade while assuming only the consequences of a pacific blockade.

Conclusions.—(a) The commander of the United States vessel of war should in no way recognize the right of the powers to institute such a pacific blockade affecting the United States.

(b) The commander should in no way acknowledge the right of the powers to enforce such a blockade against neutral commerce.

He would be under obligations to maintain this position by the action of Secretary Sherman, who replied to the proclamation of the pacific blockade:

“I confine myself to taking note of the communication, not conceding the right to make such a blockade as that referred to in your communication, and reserving the consideration of all international rights and of any question which may affect the commerce or interests of the United States.”

¹ Livre Jaune, Chine, 1885, p. 16.

(c) The commander should request of the commander of the blockading forces that the merchant vessel of the United States be allowed to enter port K. If the request is denied he should make a protest, informing the commander of the blockading forces that the United States does not acknowledge the right of a force instituting a pacific blockade to interrupt the commerce of third powers not concerned, and that for damages the blockading states would be held responsible.

(d) And further, that in no case would the United States admit that a vessel entering port K would be liable to the severe penalties of violation of blockade.

The United States commander could maintain the above positions on the ground that the authorities and practice alike justified his contention, and that it is now the general opinion—

(1) That pacific blockade should be exclusively confined to those who are parties to it and should not be extended to third states.

(2) That pacific blockade as a measure short of war does not involve any neutrality on the part of those not parties to it.

(3) That pacific blockade should be limited as far as possible that it may not be confused with belligerent blockade, which is definitely outlined.